

Natural Resources Conservation Service, USDA

§ 634.3

purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A program participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

PART 634—RURAL CLEAN WATER PROGRAM

Subpart A—General

Sec.

634.1 Purpose and scope.

634.2 Objective.

634.3 Administration.

634.4 Responsibilities.

634.5 Definitions.

Subpart B—Project Authorization and Funding

634.10 Applicability.

634.11 Availability of funds.

634.12 Eligible project areas.

634.13 Project applications.

634.14 Review and approval of project applications.

634.15 Agreements.

634.16 Suspension of grants.

634.17 Termination of grant agreement.

634.18 Termination of project.

634.19 Project completion and closeout.

Subpart C—Participant RCWP Contracts

634.20 Eligible land.

634.21 Eligible participants.

634.22 Application for assistance.

634.23 Water quality plan.

634.24 Cost sharing.

634.25 Contracting.

634.26 Contract modifications.

634.27 Cost-share payment.

634.28 Appeals not related to contract violations.

634.29 Violations.

634.30 Appeals in USDA administered projects.

634.31 Appeals of contract violations.

Subpart D—Financial Management

634.40 Financial management.

Subpart E—Monitoring and Evaluation

634.50 Program and project monitoring and evaluation.

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Subpart A—General

§ 634.1 Purpose and scope.

(a) The purpose of this part is for the U.S. Department of Agriculture (USDA), with the concurrence of the U.S. Environmental Protection Agency (EPA), to set forth regulations to carry out a Rural Clean Water Program (RCWP) under section 35, Pub. L. 95-217; 91 Stat. 1579; 33 U.S.C. 1288.

(b) The Rural Clean Water Program provides financial and technical assistance to private landowners and operators (participants) having control of rural land. The assistance is provided through long-term contracts (5 to 10 years) to install best management practices (BMP's) in project areas which have critical water quality problems resulting from agricultural activities. The proposed project area must be within a high priority area in an approved agricultural portion of a 208 water quality management plan. Participation in RCWP is voluntary.

(c) The program is a new USDA program and an extension of existing water-quality management programs of EPA.

§ 634.2 Objective.

The RCWP is designed to reduce agricultural nonpoint source pollutants to improve water quality in rural areas to meet water quality standards or water quality goals. The objective is to be achieved in the most cost-effective manner possible in keeping with the provision of adequate supplies of food and fiber and a quality environment.

§ 634.3 Administration.

At the national level, the Secretary of Agriculture, with the concurrence of the Administrator, EPA, administers RCWP. The Secretary of Agriculture has delegated responsibility for administration of the program (43 FR 8252) to the Administrator, Natural Resources Conservation Service (NRCS). NRCS will be assisted by other USDA agencies in accordance with existing authorities.

(a) A National Rural Clean Water Coordinating Committee (NRCWCC), chaired by the Administrator, NRCS, is to assist in carrying out the Rural Clean Water Program.

(b) At the State level, a State Rural Clean Water Coordinating Committee (SRCWCC) is to assist the State Conservationist, NRCS, in administering the program. The State Conservationist will chair the SRCWCC.

(c) To assure coordination at the project level, a local Rural Clean Water Coordinating Committee is to be established at the time the application is developed. An existing local committee may be used, where practicable, to perform the functions of this committee.

(d) The Administrator, NRCS, through the State Conservationists, NRCS, is to enter into agreements, where practicable, with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area. That portion of program administration to be conducted by these agencies will be defined in the project application and grant agreement. Where this is not practicable, USDA will administer the program in a project area. In those instances where USDA retains administration of the program in a project area, NRCS will enter into agreements for the transfer of funds to the Agricultural Stabilization and Conservation Service (ASCS) for the administration of part of the program.

§634.4 Responsibilities.

(a) *Environmental Protection Agency (EPA) will—*

(1) Approve 208 water quality management plans,

(2) Participate in the National and State Rural Clean Water Coordinating Committees,

(3) Review and concur in project applications approved for funding in accordance with §634.14,

(4) Advise the Secretary of Agriculture of practices which tend to defeat the purposes of contracts with rural landowners or operators in accordance with section 208(j)(1)(iv) of the act,

(5) Assist USDA in evaluating the effectiveness of the program in improving water quality, and

(6) Concur in the selection of project areas and the criteria for comprehensive, joint USDA-EPA water quality monitoring, evaluation, and analysis in accordance with §634.50.

(b) *U.S. Department of Agriculture (USDA) will—*

(1) With the concurrence of EPA, administer a program to enter into contracts to install and maintain best management practices to control agricultural nonpoint source pollution for improved water quality,

(2) Act through NRCS and such other USDA agencies as the Secretary may designate,

(3) Provide technical assistance and share the cost of carrying out best management practices that are set forth in the contracts,

(4) Where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(5) Administer the program where it is not practicable for soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(6) Together with local soil conservation districts, determine the priorities for assistance to individual participants to assure that the most critical water quality problems are addressed,

(7) Assist in evaluating the overall effectiveness of the program in improving water quality, and

(8) Within the framework of the 208 planning process, make additional investigations or plans, where necessary, to supplement information contained in the approved agricultural portion of 208 water quality management plans for the purpose of selecting among projects to be funded.

(c) *Natural Resources Conservation Service (NRCS) will—*

(1) Provide RCWP leadership,

(2) Retain major technical responsibility for RCWP, and provide leadership to assure the adequacy of standards and specifications for use by all administering agencies,

(3) Manage budgeting, accounting, and reporting.

(4) Chair NRCWCC and assure that RCWP applications are distributed to the NRCWCC, including EPA, for review.

(5) For the Secretary of Agriculture, with the concurrence of the Administrator, EPA, approve RCWP projects for funding.

(6) For the Secretary of Agriculture, select and enter into agreements with either soil conservation districts, State soil and water conservation agencies, or State water quality agencies, where practicable, to administer all or part of the program.

(7) Enter into fund transfer agreements to transfer funds to ASCS in those instances where the administration of contracts is retained by USDA.

(8) Enter into agreements with other USDA agencies, as appropriate, for support which they are to provide.

(9) Chair SRCWCC.

(10) For the Secretary of Agriculture, in coordination with NRCWCC, determine the maximum Federal contribution to the total cost of the project.

(11) Provide technical assistance through soil conservation districts or arrange for other Federal, State, local agencies, or private individuals or firms to provide technical assistance as appropriate.

(12) Provide technical assistance to soil conservation districts and County Agricultural Stabilization and Conservation (ASC) Committees to assist them in determining priorities of assistance among individual participants.

(13) Develop appropriate technical and administrative training programs.

(14) Provide leadership for USDA for comprehensive joint USDA-EPA water quality monitoring, evaluation, and analysis in selected project areas.

(15) Provide leadership for USDA in evaluating the effectiveness of the program in improving water quality.

(16) Carry out the function of soil conservation districts for approving water quality plans where no soil conservation district exists, and

(17) Through the State Conservationist, after considering recommendations of the SRCWCC, reach agreement with the Governor on the recommended ad-

ministering agency to be included in the project application.

(d) *The Agricultural Stabilization and Conservation Service (ASCS) will—*

(1) Participate on the National, State, and local coordinating committees.

(2) Provide guidance to State and County ASC Committees and coordinate the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP) with RCWP.

(3) Where the administration of contracts is retained by USDA, enter into agreements with NRCS for the transfer of funds to be allocated to County ASC Committees.

(4) Consolidate reports of the annual cost-share disbursements made by the State ASC Committee, and report these disbursements to NRCS.

(5) Furnish data on land use, crop history, and cost-shared conservation measures.

(6) Review plans and contracts to assure coordination with other farm programs, and

(e) *The Forest Service (FS) will—*

(1) Retain technical responsibility for forestry.

(2) Provide technical assistance through the State forestry agency (State Forester as appropriate) for planning, applying, and maintaining forestry best management practices, and

(3) Participate on the National, and as appropriate, State, and local coordinating committees.

(f) *The Science and Education Administration (SEA) will—*

(1) Develop, implement, and coordinate educational programs for agricultural nonpoint source water pollution control.

(2) Participate on the National, and as appropriate, State, and local coordinating committees, and

(3) Provide technical assistance for appropriate BMP's.

(g) *The Economics, Statistics, and Cooperatives Service (ESCS) will:* (1) Participate on the National coordinating committee and, as appropriate, participate in State, and local coordinating committee activities.

(2) Assist in the economic evaluation of best management practices and RCWP projects.

(3) Make data available from existing and planned ESCS surveys relating to water quality and related matters,

(4) Assist in RCWP evaluation by making available the ESCS land and water resource economic modeling systems, and

(5) Conduct socioeconomic research, within ESCS authorities and funds, on relevant policy and program issues pertinent to RCWP.

(h) *The Farmers Home Administration (FmHA) will—*

(1) Participate on the National, and as appropriate, State and local coordinating committees, and

(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.

(i) The NRCWCC is chaired by the Administrator, NRCS. Other members of the National Committee are the Administrators of ASCS, FmHA, and ESCS; the Chief of FS; the Director of SEA; and the Assistant Administrator for Water and Waste Management, EPA. Non-Federal agencies such as conservation districts, State soil and water conservation agencies, State water quality agencies, and other organizations are invited to attend as observers. The duties of the Committee are to:

(1) Coordinate individual agency programs with the Rural Clean Water Program,

(2) Recommend to the Administrator, NRCS, the project applications to be funded,

(3) Advise the Administrator, NRCS, on the maximum Federal contribution to the total cost of the project,

(4) Assist the Administrator, NRCS, in mediating agency differences at the State level,

(5) Periodically advise the Secretary and Assistant Secretary for Conservation, Research and Education of program and policy issues, and

(6) Recommend project areas and criteria for comprehensive, joint USDA/EPA water quality monitoring, evaluation, and analyses.

(j) The SRCWCC is chaired by the State Conservationist, NRCS. Other members of the State committee are the State water quality agency, a designated representative of the areawide agencies, the State soil and

water conservation agency, a designated representative of soil and water conservation districts, other State and local agencies or individuals as the Governor deems appropriate, and representatives of the agency members of the NRCWCC. The duties of the committee are to insure that a process exists:

(1) To consult with the Governor or his designee on the Governor's determination of priority project areas,

(2) To assure coordination of activities at the project level by assisting in determining the composition and responsibilities of the local rural clean water coordinating committee,

(3) To prepare the RCWP applications for the Governor to submit to the State Conservationist, NRCS, based on priorities established by the Governor,

(4) To incorporate adequate public participation, including public meeting(s), and appropriate environmental assessment in the preparation of RCWP applications,

(5) To monitor and evaluate the RCWP in the State and to assist USDA and EPA in their comprehensive, joint water quality monitoring and evaluation of selected project areas in accordance with § 634.50,

(6) To develop procedures for coordination between conservation districts and county ASC committees and between RCWP and other water quality programs at the local level,

(7) To assist the State Conservationist, NRCS, in mediating agency differences at the local level,

(8) To initiate a written agreement setting forth any or all of the above activities when the Governor and the Secretary of Agriculture or his designee deem it appropriate, and

(9) To make recommendations to the State Conservationist, NRCS, concerning the selection of the administering agency to be included in the project application.

(k) The State soil and water conservation agency will, as appropriate:

(1) Assist in preparing and submitting applications for RCWP,

(2) Administer all or part of the RCWP for a project area,

(3) Carry out the responsibilities of soil conservation districts for determining priority for assistance among

individual participants where no soil conservation district exists, and

(4) Participate on the State and local coordinating committees.

(l) The State 208 water quality agency will, as appropriate:

(1) Assist in preparing and submitting applications for rural clean water projects,

(2) Administer all or part of the RCWP for a project area,

(3) Participate on the State and local coordinating committees, and

(4) Assist in monitoring and evaluating the water quality effectiveness of projects.

(m) The soil conservation district will:

(1) As appropriate, assist in the preparation and submission of applications for rural clean water projects,

(2) As appropriate, administer all or part of the RCWP in a project area.

(3) As appropriate, participate on the local coordinating committees,

(4) Approve participants' water quality plans, and

(5) Together with the county ASC Committee, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed.

(n) The county ASC committee will:

(1) Together with the soil conservation district, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed,

(2) Receive applications for assistance for individual participants where USDA retains administration of the program,

(3) Make cost-share payments to individual participants where USDA retains administration of the program, and

(4) As appropriate, participate on the local coordinating committees.

(o) The designated management agency(s) for the agricultural portion of a 208 plan for the project area will:

(1) Assist in preparing and submitting an application for a rural clean water project in an area for which they were designated,

(2) Submit a letter, as part of the project application, certifying that the BMP's proposed for cost sharing are

consistent with the BMP's in the approved 208 plan,

(3) Submit a letter, including a schedule, giving assurance that an adequate level of participation in the project will be achieved within 5 years, and

(4) As appropriate, serve as the administering agency.

(p) The administering agency will:

(1) As appropriate, enter into a grant agreement or fund transfer agreement with the Natural Resources Conservation Service for:

(i) Receiving funds from the Natural Resources Conservation Service for administrative costs, cost sharing, and technical assistance, as appropriate, associated with carrying out the project,

(ii) Establishing detailed work schedules in accordance with the approved project application,

(iii) Establishing the maximum amount of administrative costs chargeable to the grant,

(iv) Establishing an adequate financial management system,

(v) Preparing a cost allocation plan,

(vi) Monitoring and reporting performance,

(vii) Reviewing applications for assistance from landowners or operators,

(viii) Certifying availability of funds, and

(ix) Complying with OMB Circular A-102 and other appropriate regulations,

(2) Enter into contracts with participants for the installation and maintenance of BMP's based on water quality plans developed by participants,

(3) Make cost-share payments to participants upon receipt of certification by NRCS,

(4) Issue modifications to participant RCWP contracts,

(5) Develop average cost rates for each practice applicable in the project area.

(6) Sample and inspect materials used in the installation of BMP's,

(7) Establish a contract violations and appeals and collections process,

(8) Provide for public involvement in the implementation of RCWP in a project area, and maintain a mailing list of interested individuals and organizations for informing the public

about the activities contemplated and carried out in the project area, and

(9) Maintain records, provide necessary facilities, personnel, and legal counsel for carrying out these responsibilities.

(q) The Governor of each State will:

(1) In order to qualify for assistance under RCWP:

(i) Establish priorities for RCWP project areas in the State,

(ii) Coordinate the development of RCWP project applications with the SRCWCC and local agencies,

(iii) Submit, in order of priority, RCWP project applications to the Administrator, NRCS, through the State Conservationist, NRCS, and

(iv) Recommend an eligible State or local agency to serve as the administering agency of the project, or request USDA to be the administering agency.

(2) Where appropriate, with the State Conservationist, NRCS, set forth the activities of the SRCWCC in a written agreement,

(3) Assign additional State and local agencies or individuals to membership on the SRCWCC, as appropriate, and

(4) Reach agreement with the State Conservationist, NRCS, in selecting the administering agency.

§ 634.5 Definitions.

(a) *Adequate level of participation.* An adequate level of participation is reached when participants, having control of 75 percent of the identified critical area or source of the pollution problem in the project area, are under contract. Exceptions may be made where the approved agricultural portion of the 208 plan provides data and analyses which indicate that a greater or lesser percentage of the critical area or source treated is needed to attain water quality standards or water quality goals. Fifty (50) percent of the adequate level of participation is to be achieved within 3 years; the remainder within 5 years.

(b) *Administering agency.* A soil conservation district, State soil and water conservation agency, or State water quality agency that enters into an agreement with the State Conservationist, NRCS, to administer assigned responsibilities for RCWP projects; or

ASCS, when USDA retains contract administration.

(c) *Administrative cost.* Grant and fund transfer costs, including allowable costs incurred by the Administering agency in contract administration. These costs, indirect and direct, include charges for personnel, travel, materials, and supplies. The costs are limited to a maximum of 5 percent of the Federal share for BMP cost.

(d) *Agreement.* A legal instrument reflecting the relationship between NRCS and the administering agency for performance of RCWP activities.

(e) *Agricultural nonpoint source pollution.* Pollution originating from existing nonpoint sources that are (a) agriculturally related, including runoff from animal waste disposal areas and from land used for livestock and crop production, or (b) silviculturally related pollution.

(f) *Agricultural portion of a 208 plan.* That portion of the 208 plan that deals with agriculture and those silvicultural activities related to farming and ranching enterprises.

(g) *Appeals board.* A group of three or more individuals, including a hearing officer, established by the administering agency with the concurrence of the State conservationist, NRCS, to review asserted contract violations, hear associated appeals, and report its findings, conclusions, decisions, and recommendations in State or locally administered projects.

(h) *Average cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMP's or an identifiable unit thereof.

(i) *Best Management Practice (BMP).* A single practice or a system of practices included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution to improve water quality.

(j) *BMP cost.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials, and services for carrying out BMP's or an identifiable unit of a BMP. If the participant uses his or her own resources, the cost includes the computed value of his or her own labor, equipment use, and materials.

(k) *Contract*. The legal document, that includes the water-quality plan and is executed by the participant and the administering agency. It details the agreement between parties for carrying out BMP's on the participant's land.

(l) *Cost-share level*. The percentage of the total cost of installing BMP's included in the participant's contract that is paid by the administering agency.

(m) *Critical areas or sources*. Those finite areas or sources of agricultural nonpoint source pollutants identified as having the most significant impact on the quality of the receiving waters.

(n) *Federal Management Circular FMC 74-4*. "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

(o) *Financial burden*. The participant's contribution to the total cost of BMP's that would be inequitable or probably prevent participation in RCWP.

(p) *Identifiable unit*. A component of a BMP that can be clearly identified in carrying out BMP's in the water quality plan.

(q) *Letter of Credit—Treasury Regional Disbursing Officer System*. The system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing officers.

(r) *Management agency*. The Federal, State, interstate, regional, or local agency designated by the Governor to carry out the approved agricultural portion of the 208 water-quality management plan.

(s) *OMB Circular A-34*. "Instructions on Budget Execution."

(t) *OMB Circular A-102 (Rev.)* Office of Management and Budget Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

(u) *Offsite benefits*. Those favorable effects of BMP's that occur away from the land of the participant receiving RCWP assistance and accrue to the public as a result of improved water quality.

(v) *Participant*. A landowner or operator who applies for and receives assistance under RCWP.

(w) *Participants water quality plan*. The plan which identifies critical agricultural nonpoint source(s) of water

quality problems and sets forth BMP's which contribute to meeting the water quality objectives of the project.

(x) *Privately owned rural land*. Those lands not held by Federal, State, or local governments which include cropland, pastureland, forest land, rangeland, and other associated lands.

(y) *RCWP projects*. The total system of BMP's, institutional arrangements, and technical, cost-sharing, and administrative assistance activities that are authorized in a RCWP project area.

(z) *Standards and specifications*. Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMP's.

(aa) *State*. Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(bb) *Technical assistance cost*. Those direct and indirect costs associated with the preparation and review of participant water quality plans; design, layout and application of BMP's; and investigations associated with monitoring and evaluating progress toward meeting project objectives.

(cc) *Treasury Circular 1075 (Rev.)*. Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

Subpart B—Project Authorization and Funding

§ 634.10 Applicability.

RCWP is applicable in project areas that meet the criteria for eligibility contained in § 634.12 and are authorized for funding by the Administrator, NRCS.

§ 634.11 Availability of funds.

(a) The provisions of the program are subject to the appropriation of funds by Congress to the U.S. Department of Agriculture.

(b) The allocation of funds to the administering agencies is to be made on the basis of the total funds needed to carry out the project.

(c) The obligation of Federal funds for RCWP contracts with participants

is to be made on the basis of the total contract costs.

§ 634.12 Eligible project areas.

(a) Only those project areas which are included in an approved agricultural portion of a 208 water quality management plan, or revised portions thereof, and have identified agricultural nonpoint source water quality problems are eligible for authorization under RCWP. Those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) The management agency designated by the Governor under section 208(c)(1) of the Act to implement the agricultural portion of the 208 plan must assure in writing in the project application that there will be an adequate level of participation by land owners or operators with critical areas or sources in a project area.

(c) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligible for authorization, the area's water quality problems must be related to agricultural nonpoint source pollutants, including sediment animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels. Generally, the project areas will be less than 200,000 acres.

§ 634.13 Project applications.

(a) The SRCWCC is to assure that a process exists to prepare the RCWP project applications for submission by the Governor in order of priority to the Administrator, NRCS, through the State Conservationist, NRCS. This process must include the opportunity for public participation, especially participation by potential RCWP participants. Applications will be submitted in conformance with OMB Circular A-95.

(b) The preparation and submission of applications are to be based on the priorities established by the Governor

and data and information in the approved agricultural portion of the State or areawide 208 water quality management plan.

(c) Applications shall contain the following components. Additional material may be added when, in the judgment of the applicant, it is needed to fully support the application and/or would enhance the probability of project authorization. Information provided under each component shall be in sufficient detail to permit the NRCWCC to evaluate the application using priority criteria in § 634.14.

(1) *Description of the project area,*

(2) *Severity of the water quality problem,*

(3) *Objectives and planned action,*

(4) *Schedule for carrying out the plan, and*

(5) *Estimated cost.* This component is to identify and show the basis for those costs associated with completing the project. The project application shall include an estimate of the total cost of the project, the Federal contribution, and the non-Federal contribution. The Federal contribution shall not exceed 50 percent unless the application, based on offsite benefits and financial burden, show that a higher level is appropriate.

(6) *Estimated water quality benefits and effects.*

(7) *Arrangements for project administration.* This component is to set out the applicant's plan for carrying out the program in the project area. The plan should:

(i) Identify the administering agency and document the capability of the agency to carry out the responsibilities described in § 634.4(p). In addition, information should be included to describe the administering agency staff, the location of that staff relative to the project area, and the experience of the agency in administering comparable grant programs.

(ii) Where appropriate, describe the specific arrangements that have been made, or that are anticipated, for local, State, and Federal agency participation such as technical assistance and other cost-sharing programs.

(8) *Attachments.* The following attachments are the minimum required with each application:

(i) A letter from the water-quality management agency designated by the Governor to carry out the approved agricultural portion of the 208 water quality management plan for the area or source certifying that the BMPs to be cost shared are consistent with the BMP's in the 208 plan,

(ii) A letter from the designated management agency which assures and sets out a strategy for reaching an adequate level of participation (§ 634.5(a)).

(iii) As appropriate, the preapplication for Federal assistance (OMB Circular A-102) from the identified administering agency, and

(iv) A listing of the prevailing cost-share levels of other programs in the project area.

§ 634.14 Review and approval of project applications.

(a) In reviewing applications and recommending priorities, the NRCWCC will consider the following:

(1) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

(i) State designated uses of the water affected,

(ii) Kinds, sources, and effects of pollutants, and

(iii) Miles of stream or acres of water bodies affected,

(2) Demonstration of public benefits from the project, including:

(i) Effects on human health,

(ii) Population benefited by improved water quality,

(iii) Effects on the natural environment, and

(iv) Additional beneficial uses of the waters that result from improvement of the water quality,

(3) Economic, and technical feasibility to control water quality problems within the life of the project, including:

(i) Cost effectiveness of BMP's,

(ii) Size of the area and BMP's needed, and

(iii) Cost per participant and cost per acre for solution of problem,

(4) State and local input in the project area, including:

(i) Funds for cost-sharing, technical, and administrative costs. States or local governments with their own cost-

share programs may receive greater consideration for the funding of RCWP projects,

(ii) Commitment of local leadership to promote the program, and

(5) The project area's contribution to meeting the national water quality goals.

(b) Based on the project applications, the NRCWCC is to recommend an upper limit of the Federal contribution to the total cost of the project.

(c) All project applications will be reviewed by EPA. Project applications approval for funding require written EPA concurrence, except that the Administrator, NRCS, may assume EPA's concurrence if EPA does not act within 45 days following receipt of the project application. EPA review of project applications will occur concurrently with review by the NRCWCC.

(d) The Administrator, NRCS, will approve projects for funding. The NRCWCC acting through the Chairman will announce the approval of the project. The State Conservationist, NRCS, through the SRCWCC, will also inform the other involved Federal, State, and local agencies of the approval.

§ 634.15 Agreements.

The State Conservationist, NRCS, upon receiving notice of an approved project, is to enter into a grant agreement with the administering agency, except in those cases where USDA is to administer the program. When USDA retains administration, the State Conservationist, NRCS, is to enter into a fund transfer agreement with the State Executive Director, ASCS.

(a) *Grant agreements.* Grant agreements detail the working arrangements and applicable operating regulations between NRCS and the administering agency. A written grant agreement identifying the parties involved, their responsibilities for carrying out the program, and the amount of program funds to be encumbered by NRCS is to be executed by the parties. This agreement is the fund obligating document. It also sets out the necessary working arrangements between parties for determining and allocating the administering agency's costs. All grants to administering agencies are to be in

accordance with OMB Circular No. A-102, Department of the Treasury Circular No. 1075, and Federal Management Circular No. 74-4. State or local administering agency grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office, or by NRCS approved advance/reimbursement financing arrangements subject to the terms and conditions of the grant agreement.

(1) The grant agreement will provide for payment of cost-sharing for BMP (§634.5(j)) and administrative costs (§634.5(c)).

(2) The grant agreement may provide for payment of technical assistance costs when the administering agency has the capability, and the NRCS designates that agency to provide this assistance to RCWP participants.

(3) The administering agency is to monitor the performance of activities supported by RCWP grant funds to assure that time schedules and participant RCWP contract requirements are being met. Performance goals are to be measured against the terms of the grant agreement and program directives. When NRCS determines that on-site technical inspections, certified completion data, and financial status reports do not provide adequate grant evaluation data, the following information may be requested:

(i) A comparison of actual accomplishments with the objectives established for the plan,

(ii) Reasons why established objectives were not met, and

(iii) Objectives established for the next reporting period.

(4) Grant agreements may be amended by mutual agreement of the parties to the agreement. NRCS may unilaterally amend agreements when the sole consideration is a change in the cost and the Administrator, NRCS, based on NRCWCC recommendations, determines that such an adjustment is necessary to carry out the program efficiently and effectively.

(b) *Fund transfer agreements.* When it is impractical for NRCS to enter into agreements with local soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer the program in a project area, USDA will re-

tain program administration. In this case, the State Executive Director, ASCS, and the State Conservationist, NRCS, are to enter into an agreement for the transfer of funds to ASCS through county ASC committees for activities included in administrative cost (§634.5(c)) and BMP cost (§634.5(j)). The following general working arrangements are to apply:

(1) Administering contracts, making cost-share payment, and program reporting are to be provided by ASCS as the administering agency.

(2) NRCS, or its designee, with appropriate Federal or State agency support, will provide technical assistance to participants in preparing RCWP contracts and in carrying out their water-quality plans.

(c) *Agreements for services.* NRCS may enter into an agreement for services with a State or local agency. The designee must meet the requirements of OMB Circular No. A-102.

(d) *Contracts for services.* NRCS may enter into contracts for services with individuals or firms for providing technical assistance.

§ 634.16 Suspension of grants.

(a) *Suspension orders.* Work on a project or on a portion or phase of a project for which a grant has been awarded, may be suspended by order of the State Conservationist, NRCS. Suspension does not affect RCWP contracts existing at the time the suspension order is issued, or the administering agency's responsibility to make payments under such contracts unless specifically provided for in the suspend order. In no event will the participant's right to cost-share payment be diminished by action taken under this section.

(b) *Use of suspension orders.* Suspension may be required for good cause, such as default by the administering agency, failure to comply with the terms and conditions of the grant, realignment of programs, or advancements in the state of the art.

(c) *Contents of suspension orders.* Prior to issuance, suspension orders will be discussed with the administering agency and may be appropriately modified, in the light of such discussions. Suspension orders are to include:

(1) A clear description of the work to be suspended,

(2) Instructions as to the issuance of further orders by the administering agency for materials or services,

(3) Instructions as to the administering agency entering into new RCWP contracts in the project area,

(4) Instructions as to the administering agency servicing existing RCWP contracts in the project area, and

(5) Other instructions to the administering agency for minimizing Federal costs.

(d) *Issuance of suspension order.* Suspension orders are issued by the State Conservationist, NRCS, by letter to the administering agency (certified mail, return receipt requested). A suspension order may not exceed forty-five (45) calendar days.

(e) *Effect of suspension order.* (1) Upon receipt of a suspension order, the administering agency shall promptly comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the order during the period of work suspension. During the suspension period, NRCS shall either:

(i) Cancel the suspension order, in full or in part, and authorize resumption of work, or

(ii) Take action to terminate the work covered by such order as provided by § 634.17.

(2) If a suspension order is canceled, or the period of the order expires, the administering agency shall promptly resume the suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant agreement may be amended:

(i) The suspension order results in an increase in the time, or cost properly allocable to, the performance of any part of the project; and

(ii) The administering agency asserts a written claim for such adjustment within thirty (30) days after the end of the period of work suspension. If no written claim is made, NRCS may unilaterally make such adjustments.

(iii) Reasonable costs resulting from the suspension order shall be allowed in arriving at any terminations settlement.

(3) Costs incurred by the administering agency after a suspension order is delivered that are not authorized by this section or specifically authorized in writing by the State Conservationist, NRCS, shall not be allowable costs.

§ 634.17 Termination of grant agreement.

(a) *Termination agreement or notice.* (1) The State Conservationist, NRCS, may, based on evidence of failure to comply with the terms of the grant agreement, issue a notice of intent to terminate the grant agreement. The notice of intent to terminate has the force and effect of extending or modifying the conditions of the suspend order. Any modification of the conditions of the suspend order shall be shown in the notice and discussed with the administering agency. The State Conservationist shall give not less than ten (10) days written notice to the administering agency (certified mail, return receipt requested) of intent to terminate the grant in whole or in part.

(2) After the administering agency has been afforded an opportunity for consultation, the State Conservationist, NRCS, may request authorization from the Administrator, NRCS, to terminate the grant in whole or in part. If the Administrator, NRCS, concurs in the termination action, the proposed termination notice will be forwarded to the Administrator, EPA, for concurrence.

(3) After the Administrators, NRCS and EPA, have been informed of any expressed views of the administering agency and concurred in the proposed termination, the State Conservationist, NRCS, may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(4) Termination of all or part of the grant agreement may be carried out by either execution of a termination agreement by the State Conservationist, NRCS, or issuance of a grant termination notice by the State Conservationist, NRCS. The agreement or notice shall establish the effective date of termination of the grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party.

(b) *Basis for termination.* A grant may be terminated by NRCS for good cause subject to negotiation and payment of appropriate termination settlement costs. Cause for termination by NRCS includes:

(1) Failure by the administering agency to make satisfactory progress toward achieving an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, NRCS, that the administering agency has failed or is unable to perform in accordance with the provisions of the grant agreement; or

(2) Failure through no fault of the administering agency to achieve an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, NRCS, that the planned actions approved in the project application cannot be achieved.

(c) *Effect of grant termination.* (1)(i) In those cases where cause for grant termination is based on the administering agency's failure or inability to perform (§634.17(b)(1)), upon termination, the administering agency must refund or credit to the United States that portion of the grant funds paid or owed to the administering agency and allocable to the terminated project work. Funds needed to meet unavoidable commitments may be retained. All other funds, including unexpended cost-sharing monies for existing RCWP contracts executed prior to the termination date, shall be refunded to the United States. The administering agency shall not make any new commitments or enter into any new RCWP contracts. The administering agency shall reduce the amount of other outstanding commitments insofar as possible and report to the State Conservationist, NRCS, the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conformance with applicable Federal cost principles.

(ii) Upon termination of a grant agreement, existing RCWP contracts and their related obligations will immediately, and in no case later than 5 calendar days be transferred to the ASCS county office to assure continuity in payments to participants. The

State Conservationist, NRCS, will immediately initiate action under §634.15 to establish a new administering agency for completion of the project.

(2) In those cases where cause for grant termination is based on failure to achieve the planned actions through no fault of the administering agency, the termination agreement and amended grant agreement are to permit the administering agency to fulfill the obligations of its existing RCWP contracts. The administering agency shall not make any new commitments or enter into any new RCWP contracts without NRCS approval.

§634.18 Termination of project.

(a) An RCWP project is terminated by the State Conservationist because an adequate level of participation cannot be achieved. Upon this determination, the State Conservationist shall publish in a newspaper of public record in the project area a notice of intent to terminate all or part of the grant agreement and the project (§634.7(c)), and an announcement of the time and place of a public hearing.

(b) No sooner than 15 days from the publication of the notice of intent to terminate all or part of the project and grant agreement, the State Conservationist will conduct a public hearing in the project area.

(c) If, based on the hearing record, the performance record of the administering agency, and the recommendations of the SRCWCC, the State Conservationist determines that the project will be terminated pursuant to §634.17(c), the State Conservationist will enter into a grant termination agreement or issue a grant termination notice.

(d) The existing RCWP contracts will be transferred to the ASCS county office pursuant to §634.17(c)(1)(ii).

(e) The State Conservationist will prepare a project close-out report summarizing the actions accomplished.

§634.19 Project completion and close-out.

(a) The maximum total life of a project shall be fifteen (15) years or less.

(b) The allowable contracting period may be increased if an adequate level

of participation has been achieved and the designated management agency assures a significant increase in participation can be reached in a reasonable time.

(c) The grant or fund transfer agreement with an administering agency shall expire when the administering agency has fulfilled all of its obligations in the long-term RCWP contracts.

(d) When a project is completed, the administering agency is to provide the State Conservationist, NRCS, a close-out report which summarizes the actions accomplished.

Subpart C—Participant RCWP Contracts

§ 634.20 Eligible land.

RCWP is only applicable to privately owned land. Land owned by corporations whose ownership is public (i.e., their stock is publicly traded over the market) is eligible for program assistance only if the corporation can document that the installation of BMP's places an inappropriate financial burden on the corporation.

§ 634.21 Eligible participants.

(a) Any landowner or operator whose land or activities in a project area is contributing to the area's agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract.

(b) This program will be conducted in compliance with all nondiscrimination requirements as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1 through 15.12).

§ 634.22 Application for assistance.

(a) Landowners or operators must apply for RCWP assistance through the office of the administering agency or its designee(s) by completing the prescribed application form.

(b) The priority for assistance among landowners and operators in developing water quality plans is to be determined jointly, through an agreed-to process, by the county ASC committee and the

soil conservation district, with technical assistance from NRCS.

(c) Applications that are ineligible or technically infeasible are to be returned to the applicant with a letter stating the reasons for disapproval. Applications that are of a low priority will be retained and the applicant will be sent a notice that the application is being held for a period to be determined locally for future consideration.

§ 634.23 Water quality plan.

(a) The participant's water quality plan, developed with technical assistance by the NRCS or its designee, is to include appropriate BMP's identified in the approved agricultural portion of the 208 water quality management plan. Such BMP's must reduce the amount of pollutants that enter a stream or lake by:

(1) Methods, such as reducing the application rates or changing the application methods of potential pollutants, and

(2) Methods, such as practices or combinations of practices which prevent potential pollutants from leaving source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participant's water quality plans shall as a minimum include BMP's for all critical areas or sources. The plans will include BMP's which are required but not cost-shared. Non-cost-shared BMP's, essential for the performance and maintenance of cost-shared BMP's shall be required as a condition of the RCWP contract.

(c) The participant is responsible for compliance with all other applicable Federal, State, and local laws that deal with the participant's nonpoint source water quality problems, such as the treatment, storage, and disposal of hazardous waste. BMP's required for compliance may be cost shared.

(d) It is recognized that the participants' water-quality plans upon which the RCWP contracts are to be based may include conservation measures other than those related to water quality improvement. These measures are not eligible for cost sharing under this program. The installation of such conservation measures will not be required

as a condition of the RCWP contract and will not be shown in the time schedules for implementing BMP's.

(e) Time schedules for implementing BMP's are to be provided in the participant's water quality plan. The time schedule is to establish the length of the contract within the 5 to 10 year period established by law.

(f) The Natural Resources Conservation Service will certify as to the technical adequacy of the water-quality plan.

(g) The soil conservation districts are to review and approve all water-quality plans and modifications.

§ 634.24 Cost sharing.

(a) The portion of BMP cost (including labor) to be cost shared shall be that part which the Secretary determines is necessary and appropriate. The value of land upon which BMP's are applied, or the participant's water rights, cannot be considered a part of the participant's share of the cost.

(b) The administering agency, in consultation with the county ASC committee(s), soil conservation district(s), and designated management agency will annually set maximum individual BMP cost-share levels for the project area. However, the Federal share of the cost of the contract cannot exceed 50 percent unless a variance has been granted.

(c) Recommended variances exceeding the 50 percent level must be in the public interest and based on the following criteria:

(1) The main benefits to be derived from measures are related to improving offsite water quality, and

(2) The matching share requirements would place a burden on the landowner or operator which would probably prevent him or her from participating in the program.

(d) BMP's to be cost shared must have a positive effect on water quality by reducing the amount of agricultural nonpoint source pollutants that enter a stream or lake.

(e) Cost sharing is not to be made available for:

(1) Measures installed primarily for bringing additional land into crop production, including but not limited to land clearing and brush removal;

(2) Measures installed primarily for increasing production on existing cropland, including but not limited to bedding, field ditches, open drains, and tile drains;

(3) Measures having flood protection as the primary purpose, including but not limited to open channels, clearing and snagging, and obstruction removal;

(4) Structural measures authorized for installation under Pub. L. 83–566.

(f) The Federal cost-share level is not to be reduced by the contribution of a State or subdivision thereof. Total payments from Federal, State, and local sources for a BMP may not exceed the total cost of that BMP.

§ 634.25 Contracting.

(a) To participate in RCWP, a landowner or operator must enter into a contract in which he or she agrees to apply his or her water-quality plan. Any person who controls, or shares control, of the farm, ranch, or other land for the proposed contract period (5 to 10 years) must sign the contract.

(b) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the administering agency.

(c) The participant must furnish satisfactory evidence of his or her control of the farm, ranch, or other land. The administering agency is to determine the acceptability of the evidence and maintain current ownership evidence in the contract file.

(d) RCWP contracts shall include the basic contract document, special provisions as needed, the participant's water-quality plan, schedule of operations, and any other data necessary.

(e) NRCS or its designee shall approve the technical adequacy of the RCWP contract and obtain the required signature of the participants. The NRCS or its designee will provide the contract to the administering agency for certification of fund availability and for execution.

(f) Participants shall install best management practices according to the specifications that are applicable at the time measures are installed.

(g) NRCS will provide technical assistance to participants for installing BMPs. The State Conservationist, NRCS, or its designee may enter into

contracts with qualified soil conservation districts or others to provide technical assistance.

(h) The RCWP contract is to require BMPs to be operated and maintained by the participant at no cost to that administering agency.

(i) The contract period is to be not less than 5 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(j) A land owner or operator may enter into a contract jointly (pooling agreement) with other land owners or operators to solve mutual water quality problems. Each participant must enter into an RCWP contract to treat water quality problems not covered by the joint arrangement.

(k) Participants may use all available sources of assistance to accomplish their water-quality objectives. They are responsible for:

(1) Accomplishing the water-quality plan;

(2) Keeping the administering agency informed of their current mailing address;

(3) Obtaining, having in hand, and maintaining any required permits and landrights necessary to perform the planned work;

(4) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications;

(5) The operation and maintenance of BMPs installed during the contract period; and

(6) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(l) Unless otherwise approved by the Administrator, NRCS, and Administrator, EPA, the administering agency shall not enter into any new RCWP contracts after five (5) years of elapsed time from the date when RCWP funds are first made available to begin the project.

(m) Contracts may be terminated due to hardship by mutual agreement if the administering agency and the State Conservationist, NRCS, determine that

such action would be in the public interest.

§ 634.26 Contract modifications.

(a) The administering agency may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, or water-quality programs.

(b) Requirements of active contracts may be waived or modified by the administering agency only if such waiver or modification is specifically provided for in these regulations. NRCS concurrence in modifications is necessary when modifications involve a technical aspect of the participant's water-quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

(c) Contracts may be modified to add, delete, substitute, or reinstall best management practices when:

(1) The installed measure failed to achieve the desired results through no fault of the participant,

(2) The installed measure deteriorated because of conditions beyond the control of the participant, or

(3) Another BMP is substituted that will achieve the desired results.

(d) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion.

(e) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on the land unit that was transferred and the participant having control over such land:

(1) Forfeits all right to any future cost-share payments on the transferred land unit, and

(2) Must refund with interest all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except that

where it is determined by the administering agency, with the approval of the State conservationist, NRCS, that the established BMPs will provide water quality benefits for the design life of the BMP, the payment may be retained.

(f) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, but not made to the participant who applied the BMPs and had control prior to the transfer, can be made,

(2) Such land owner or operator is to assume all obligations of the previous participant on the transferred land unit,

(3) The contract with the new participant is to remain in effect with the original terms and conditions, and

(4) The contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the administering agency, the provisions of paragraphs (e) (1) and (2) of this section apply.

(g) The transfer of all or part of a land unit by a participant does not affect the rights and obligations of other participants who have signed the contract.

§ 634.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal Cost-share payments are to be made by the administering agency upon certification by the District Conservationist, NRCS, or its designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum total Federal cost-share payment to a participant shall be limited to \$50,000. Exceptions to this limit may be made by the administering agency with concurrence of the Administrator, NRCS, upon recommendation of the NRCWCC, where it determines that the main benefits to be derived are essential for meeting the water quality objectives in the project area.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the administering agency at the cost-share percentage and by one of the fol-

lowing methods designated by the administering agency and set out in the contract:

(i) Average cost, or

(ii) Actual cost not to exceed average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the administering agency for each project using cost data from the local area. These costs should be reviewed by the SRCWCC for consistency with average costs in other USDA programs. The average cost list is to be updated annually by the administering agency.

(e) *Application for payment.* Cost-share payments can be made by the administering agency after a participant has carried out a BMP or an identifiable unit of a BMP. Application for payment must be submitted to the administering agency, be certified by the NRCS or its designee, and be supported by such cost receipts as are required by the administering agency. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.* (1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the administering agency, its representatives, or the

Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) A State or local administering agency may allow the assignment of payments to the extent provided by State law. When ASCS is designated as the administering agency, assignments by any participant who may be entitled to cost-share payment under the program are prohibited unless they are made in accordance with the provisions of section 203, Title 31, U.S.C., as amended, and section 15, Title 41, U.S.C., as amended.

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC committee, the compensation due the participant must be used (set-off) to reduce that indebtedness. Indebtedness to USDA is to be given first consideration. Deductions for setoffs involving a non-resident alien shall be made as provided by 26 U.S.C. 871. Setoffs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* Any authorized administering agency, or NRCS employees or agents, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the application or contract. This is limited to the right to furnish technical assistance and to inspect work performed under the contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Ineligible payments.* The filing of requests for payment for BMP's not

carried out, or for BMP's carried out in such a manner that they do not meet contract specifications, constitutes a violation of the contract.

§634.28 Appeals not related to contract violations.

(a) The participant may, prior to execution of the contract, request that the administering agency review or reconsider criteria being used in developing his or her contract. Such review or reconsideration may include the eligibility of BMP's which had not been approved for application in the project area, cost-sharing levels for BMP's, priorities for developing water quality plans, and standards and specifications.

(1) If verbal agreement is not reached, the participant may make a written request within 30 days after receiving notice of the decision of his or her verbal request.

(2) The administering agency shall have 30 days in which to make a decision and notify the participant in writing.

(3) The decision of the administering agency shall be final.

(b) If, after the contract has been executed, the participant and the administering agency are unable to reach written agreement relative on matters which are not related to contract violations, the participant may request and receive a review by the appeals board. The administering agency will:

(1) Notify the participant, in writing, of the date the appeals board will consider the appeal.

(2) Within 30 days after receiving the administering agency's notice, the participant may file a request to appear and present oral and other evidence. If the participant does not request an appearance, the administering agency appeals board will decide the dispute on the evidence available to them, including statements or briefs of the authorized representatives of the soil conservation district and NRCS. The administering agency shall notify the participants of the appeals board's decision in writing. There shall be no further administrative appeal of this decision.

(c) *Filing of documents.* A document is considered filed when it is received in

the office of the person or agency concerned.

§ 634.29 Violations.

(a) *Actions causing violations.* The following actions constitute violation of a contract by a participant:

- (1) Knowingly or negligently damaging or causing BMP's to become impaired.
- (2) Adopting a land use or practice during the contract period which tends to defeat the purposes of the program.
- (3) Failing to comply with the terms of the contract.
- (4) Filing a false claim.
- (5) Misusing authorizations for payment.

(b) *Contract termination as a result of violations.* (1) By signing a contract, the participant agrees to forfeit all rights to further cost-sharing payments under a contract and to refund all cost-share payments received, with interest, if the administering agency, with the concurrence of the State Conservationist, NRCS, determines that:

- (i) There was a violation of the contract during the time the participant had control of the land; and
- (ii) The violation was of such a nature as to warrant termination of the contract.

(2) The participant shall be obligated to refund all cost-share payments and all cost shares paid under authorizations, with interest, at the rates established by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97.

(c) *Payment adjustments and refunds resulting from violations.* (1) By signing a contract, the participant agrees to refund cost-share payments received under the contract or to accept payment adjustments if the administering agency determines and the State Conservationist, NRCS, concurs that:

- (i) There was a violation of the contract during the time the participant had control of the land; and
- (ii) The nature of the violation does not warrant termination of the contract.

(2) Payment adjustments may include decreasing the rate of cost share, or deleting from the contract a cost-share commitment, or withholding cost-share payments earned but not paid. The participant who signs the

contract may be obligated to refund cost-share payments.

§ 634.30 Appeals in USDA administered projects.

The participant in a USDA-administered RCWP project may appeal decisions of the administering agency in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

§ 634.31 Appeals of contract violations.

(a) *Scope.* This section prescribes the regulations dealing with contract violations. The Administrator, NRCS, reserves the right to revise or supplement any of the provisions of this section at any time if the action does not adversely affect the participant, or if the participant has been officially notified before this action is taken.

(b) *Determination by administering agency.* Upon notification that a contract violation may have occurred, the administering agency:

(1) Determines that a violation did not occur or that the violation was of such a nature that no further action is to be taken; or

(2) Determines that a violation did occur and the participant agrees to accept a written penalty of forfeiture, refund, payment adjustment, or termination. If no agreement is reached, further action is to be taken.

(c) *Notice of possible violation.* (1) When the administering agency is notified that a contract violation may have occurred and the matter is not resolved under § 634.31(b)(1) it shall notify, in writing, each participant who signed the contract of the alleged violation. This notice setting forth the alleged violation may be personally delivered or sent by certified or registered mail. A participant is considered to have received the notice at the time of personal receipt acknowledged in writing, at the time of delivery of a certified or registered letter, or at the time of the return of a refused certified or registered letter.

(2) The notice shall give the participant an opportunity to appear at a hearing before an appeals board. The participant's request for a hearing shall be submitted in writing, and must be received by the appeals board within 30 days after receipt of the notice. The

participant shall be notified in writing by the appeals board of the time, date, and place for the hearing. The participant shall have no right to a hearing if he does not file a written request for a hearing, or if he or his representative does not appear at the appointed time, unless the appeals board, at its discretion, permits an appearance. A request for a hearing filed by a participant shall be considered to be a request by all participants who signed the contract.

(d) *Hearing.* The appeals board shall conduct an open hearing to obtain the facts about the alleged violation. The appeals board shall limit the hearing to relevant facts and evidence, and shall not be bound by the strict rules of evidence. Witnesses may be sworn in at the discretion of the appeals board.

(1) The participant or his or her representative shall be given full opportunity to present oral or documentary evidence about the alleged violation. Likewise, the administering agency may submit statements and evidence. Individuals not otherwise represented at the hearing may, at the discretion of the appeals board, be permitted to give information or evidence. The appeals board, at its discretion, may permit witnesses to be cross-examined.

(2) The appeals board shall make a record of the hearing. A summary of the testimony may be made if both the participant and the appeals board agree. A transcript of the hearing shall be made if requested by either the appeals board or the participant within 10 days prior to the hearing. If a transcript is requested by the participant, the participant may be assessed the cost of a copy of the transcript.

(3) The appeals board shall, after a reasonable period of time, close the hearing if the participant or his or her representative is not present at the scheduled time. The appeals board may, at its discretion, accept information and evidence submitted by others present for the hearing.

(4) The appeals board shall furnish the administering agency and the State Conservationist, NRCS, with a written report setting forth their findings, conclusions, and recommendations. The report shall include the summary of testimony or transcript

made of the hearing and any other information which would aid the administering agency in reaching a decision.

(e) *Decision by the administering agency.* The administering agency shall make a decision within 30 days on the basis of the appeals board report, recommendations of soil conservation district board, if any, and any other information available, including if applicable, the amount of the forfeiture, refund, or payment adjustment. The decision shall state whether the violation is of such a nature as to warrant termination of the contract. The administering agency shall notify, in writing, each participant who signed the contract of its decision. The administering agency may authorize or require the reopening of any hearing before the appeals board for any reason at any time before their decision. The administering agency's decision shall be final.

(1) If the decision provides for termination of the contract, it shall state that the contract is terminated and that all rights to further cost-share payments under the contract are forfeited and that all cost-share payments received under the contract shall be refunded with interest. The decision is to state the amount of refund and method of payment.

(2) If the decision does not provide for termination of the contract, the participant may be required to make a refund of cost-share payments or to accept payment adjustments. The decision shall state the amount and justification for refunds of cost-share payments or payment adjustments.

Subpart D—Financial Management

§ 634.40 Financial management.

(a)(1) Finance and accounting will be in conformance with Office of Management & Budget Circular A-102, (Rev.); U.S. Department of Health, Education & Welfare Brochure OASC-10, Federal Management Circular FMC 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Government"; Department of the Treasury, Department Circular No. 1075 (4th Rev.), "Withdrawal of Cash from the Treasury for Advances under Federal Grant and other Programs"; Office of

Management & Budget Circular No. A-34, "Instruction on Budget Execution"; U.S. Treasury Requirements Manual for Guidance of Departments and Agencies; and General Accounting Office Policy & Procedures Manual for Guidance of Federal Agencies.

(2) Administering agency RCWP grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office (RCO), subject to the terms and conditions of the grant agreement or by NRCS approved advance/reimbursement financing agreements.

(3) The State of local administering agency shall maintain a financial management system which provides accurate and complete disclosure of the financial status of the RCWP grant in accordance with prescribed reporting requirements.

(4) The State or local administering agency shall upon request make its financial management system records available to NRCS, USDA Office of Inspector General, and the General Accounting Office.

(5) Participation in comprehensive USDA/EPA joint water quality monitoring, evaluating, and analysis will be funded according to the plan approved in § 634.50(a)(3).

(b)(1) The carrying out of RCWP will require both financial and performance reporting to the Natural Resources Conservation Service by participating USDA and State or local agencies.

(2) USDA participating agencies shall furnish NRCS with reports prescribed by the U.S. Treasury Department; Office of Management and Budget; Administrative Regulations of the U.S. Department of Agriculture; and other reports required by law, regulation, or agreement.

(3) State or local administering agencies shall furnish financial status reports to NRCS on a quarterly basis as required by the grant agreement. The administering agency is also to provide an audit report upon request. The audit report is to be prepared in sufficient detail to allow NRCS to determine that funds have been used in compliance with applicable laws, regulations, and the grant agreement.

Subpart E—Monitoring and Evaluation

§ 634.50 Program and project monitoring and evaluation.

(a) *Comprehensive USDA/EPA joint water quality monitoring, evaluation, and analysis.* (1) Representative RCWP project areas will be selected to evaluate the improvement in water quality in the project area and to make projections on a nationwide basis. Water-quality monitoring, evaluation, and analysis will be conducted to evaluate the overall cost and effectiveness of projects and BMPs to provide information on the impact of the program on improved water quality and for general RCWP program management.

(2) Monitoring, evaluation, and analysis is a joint USDA/EPA responsibility. Subject to appropriation of funds, the Administrator, NRCS, and EPA are jointly to select the project areas to be monitored and evaluated based on a list of project areas recommended by the NRCWCC.

(3) The Administrator, NRCS, and Administrator, EPA, are jointly to determine the criteria to be used for comprehensive water-quality monitoring, evaluation, and analysis in the selected project areas. A monitoring and evaluation plan is to be developed and agreed to by NRCS and EPA prior to initiating a project selected for monitoring and evaluation. The State water-quality agency and other Federal, State, and local agencies will be involved in the development of the plan for water-quality evaluation. The involvement of concerned agencies in implementing the plan will be determined at the time the plan is prepared.

(4) The project areas selected for detailed analysis are to be representative of agricultural and silvicultural nonpoint source pollution problems, categories of agriculture and silvicultural nonpoint source pollutants, agricultural enterprises, and BMPs used in the RCWP.

(5) Preference in the selection of project areas for comprehensive evaluation is to be given to those project areas for which long-term baseline information exists on land use, hydrologic data, and water quality.

(6) Monitoring and evaluation of selected project areas is to begin sufficiently in advance of the installation of BMPs to document, in a statistically satisfactory manner, existing land-use practices and baseline water-quality problems.

(7) The water quality monitoring and evaluation plan will provide sufficient basic information to adequately describe the land use, hydrologic water quality relationship. As a minimum, the plan will contain the following components:

- (i) Chemical and physical water quality monitoring,
- (ii) Biological monitoring,
- (iii) Appropriate hydrologic data,
- (iv) Soils properties and characteristics, topographic information,
- (v) Land use and farm inventory.

(b) *Program and project evaluation.*

(1) There will be a continuing evaluation of the Rural Clean Water Program to measure its effectiveness and for each project for which cost-sharing funds are provided.

(2) Program and project evaluations will be conducted under the direction of the Assistant Secretary for Conservation, Research and Education, USDA, the Director of Economics, Policy Analysis, and Budget, USDA; and the Assistant Administrator for Water and Waste Management, EPA; or their representatives working through NRCWCC.

(3) Evaluative reports for the program and each project area will be submitted annually to the Secretary of Agriculture and the Administrator, EPA.

(c) *Funding.* (1) Research oriented activities will be from sources other than RCWP.

(2) Funding for program and project monitoring and evaluation will be provided through RCWP and other authorizations.

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

Sec.

636.1 Applicability.

636.2 Administration.

636.3 Definitions.

636.4 Program requirements.

636.5 Establishing priority for enrollment in WHIP.

636.6 Cost-share payments.

636.7 The Wildlife Habitat Development Plan (WHDP).

636.8 Cost-share agreements.

636.9 Modifications.

636.10 Transfer of interest in a cost-share agreement.

636.11 Termination of cost-share agreements.

636.12 Violations and remedies.

636.13 Misrepresentation and scheme or device.

636.14 Offsets and assignments.

636.15 Appeals.

AUTHORITY: 16 U.S.C. 3836a.

SOURCE: 62 FR 49365, Sept. 19, 1997, unless otherwise noted.

§ 636.1 Applicability.

(a) The purpose of the WHIP is to help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife.

(b) The regulations in this part set forth the requirements for the Wildlife Habitat Incentives Program (WHIP).

(c) The Chief, NRCS may implement WHIP in any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 636.2. Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program direction for the NRCS in the applicable State. The State Conservationist has the authority to accept or reject the State Technical Committee recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee's recommendation.

(c) NRCS may enter into cooperative agreements with Federal agencies, State and local agencies, conservation districts, local watershed groups, and private entities to assist with program implementation, including cost-share agreement execution, assistance, planning, and monitoring responsibilities.